

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<b>EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,</b>	)	
	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION NO. 05-0374 (GMS)</b>
<b>v.</b>	)	
	)	
<b>NABSTAR, LLC D/B/A SLEEP INN</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**MOTION TO ALLOW EEOC ATTORNEYS TO  
APPEAR WITHOUT LOCAL COUNSEL**

Pursuant to D. Del. L.R. 83.5, the United States respectfully moves this Court for an Order allowing Equal Employment Opportunity Commission (“EEOC”) Attorneys, Judith A. O’Boyle and Rachel M. Smith, to appear before this Court without the necessity of associating with local counsel. Additionally, the United States requests that Ms. O’Boyle and Ms. Smith be provided with an electronic filing password so that they can remotely file pleadings with this Court. In support of this motion, the United States provides the following:

1. The EEOC has independent litigating authority, derived from 42 U.S.C. §§ 2000e-4(b)(1) & (b)(2), for private enforcement suits brought by the EEOC under 42 U.S.C. §§ 2000e-5 & 6. The EEOC has designated Ms. O’Boyle and Ms. Smith as lead counsel for this matter. Ms. O’Boyle and Ms. Smith have been admitted to practice before this Court *pro hac vice*.

2. Local Rule 83.5 of this Court requires that attorneys such as Ms. O’Boyle and Ms. Smith, who have not been admitted to practice by the Supreme Court of Delaware, associate with a member of the bar of this Court who maintains an office in the District of Delaware. D.

Del. L.R. 83.5. As set forth below, Ms. O'Boyle is an experienced attorney. Although Ms. Smith is relatively inexperienced, she is supervised by Ms. O'Boyle. Additionally, Ms. O'Boyle has appeared before this Court *pro hac vice* in other matters. Ms. O'Boyle and Ms. Smith also routinely appear before other District Courts without the necessity of associating with AUSAs. Accordingly, requiring that AUSAs review and sign pleadings drafted by the EEOC, and appear at hearings at which Ms. O'Boyle and/or Ms. Smith will be the lead attorney, will amount to a duplication of effort. Such a duplication of effort by government attorneys will result in an unnecessary expenditure of public funds for little, or no, public gain. Of note, the District Courts in all of the jurisdictions surrounding this District allow government attorneys such as Ms. O'Boyle and Ms. Smith to appear without association of local counsel. See E.D.Pa. Local Rule 83.5(e), 83.5.2; Md. Local Rule 701(1)(b); N.J. Local Rule 101.1(f).<sup>1</sup> Accordingly, the United States respectfully requests that, in this particular case, the Court waive the local counsel requirement of Local Rule 83.5.

3. EEOC attorneys Ms. O'Boyle and Ms. Smith have already been admitted to this Court *pro hac vice* for this case. As such, they have submitted to the disciplinary jurisdiction of this Court, and have certified that they are generally familiar with this Court's Local Rules.

4. Additionally, Ms. O'Boyle is a very experienced attorney and Ms. Marino, although less so, will be supervised by Ms. O'Boyle.

a. Ms. O'Boyle has been at the EEOC since 1992 and has practiced law since

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<sup>1</sup> The New Jersey Local Rule allows out-of-town government attorneys to appear, but requires service upon the local United States Attorney. However, with the advent of electronic filing, the availability of local service is no longer important.

1990. She has taken or defended many depositions over the years, probably over 200.

Additionally, she has tried three cases and argued numerous motions for summary judgment and to compel. Furthermore, Ms. O'Boyle had previously been admitted *pro hac vice* in cases before this Court including: EEOC v. Dempsey's Diner, 99-377 (RRM); EEOC v. Greggo & Ferrara, Inc., 98-474 (SLR); and, EEOC v. Lowes, 05-373 (JJF). Finally, as an EEOC supervisory attorney, Ms. O'Boyle has supervised all EEOC cases filed in Delaware since 2000 (*e.g.*, Avecia, Wilmington Trust, MBNA, Ryder, Comcast, etc.).

b. Ms. Smith is a May, 2003 graduate of Rutgers Law School in Camden and a member of both the New Jersey and Pennsylvania bars. Immediately following law school, she served for one year as Judicial Law Clerk to now retired Judge Martin A. Herman in the Civil Division of the Superior Court of New Jersey. Her service as a trial attorney for the EEOC began on August 23, 2004. As an EEOC trial attorney, she has drafted and filed pleadings, taken and defended depositions, prepared and answered written discovery, assisted with the negotiation of settlements, and prepared for trial.

5. Undersigned counsel has communicated with counsel for NABSTAR concerning the subject of this motion and he stated that he has no objection.

Accordingly, for the reasons set forth above, the United States respectfully requests that EEOC Attorneys Judith A. O'Boyle and Rachel M. Smith be allowed to appear before this Court

without local counsel and that they be provided with an electronic filing password so that they can remotely file pleadings with this Court. A proposed order is attached hereto.

Respectfully submitted,

COLM F. CONNOLLY  
United States Attorney

\_\_\_\_\_/S/\_\_\_\_\_  
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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of July 2005, I electronically filed the attached MOTION TO ALLOW EEOC ATTORNEYS TO APPEAR WITHOUT LOCAL COUNSEL with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

Kevin J. Connors  
Marshall Dennehey Warner  
1220 North Market Street, 5<sup>th</sup> Floor  
P.O. Box 8888  
Wilmington, DE 19899-8888

\_\_\_\_\_/S/\_\_\_\_\_  
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**ORDER**

UPON CONSIDERATION of the United States' motion to allow EEOC Attorneys, Judith A. O'Boyle and Rachel M. Smith, to appear without local counsel, the reasons stated therein, the lack of any opposition thereto, and the entire record herein, it is the \_\_\_\_ day of \_\_\_\_\_, 2005 hereby

ORDERED that the United States' motion should be and it hereby is granted; and it is,

FURTHER ORDERED that, for this matter only, Local Rule 83.5(d) is waived, and EEOC Attorneys, Judith A. O'Boyle and Rachel M. Smith, are not required to associate with local counsel nor is the United States Attorney's Office required to sign pleadings nor attend proceedings with them; and it is,

FURTHER ORDERED that the Clerk's Office provide EEOC Attorneys, Judith A. O'Boyle and Rachel M. Smith, with an Electronic Filing Log-In and Password so that they may file pleadings in this Court without the participation of the United States Attorney's Office.

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UNITED STATES DISTRICT JUDGE